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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/441,493 11/17/99 LENHARD

J PU3571US

023347 HM12/0223  
DAVID J LEVY, VP INTELLECTUAL PROPERTY  
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EXAMINER
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ZEMAN, R

ART UNIT

PAPER NUMBER

1645  
DATE MAILED:

02/23/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No. 09/441,493	Applicant(s) Lenhard et al.
Examiner Robert A. Zeman	Group Art Unit 1645

Responsive to communication(s) filed on Nov 17, 1999

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-12 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 1-12 are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1645

## **DETAILED ACTION**

### ***Election/Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, drawn to methods of diagnosing lipodystrophy, classified in class 436, subclass 147.
- II. Claims 6-8, drawn to methods of monitoring the dyslipidemic effects of drug therapy, classified in class 436, subclass 147.
- III. Claims 9-12, drawn to methods of determining the temperature of internal organs, classified in class 436, subclass 147.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are drawn to differing methods having different steps and leading to differing results.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Art Unit: 1645

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (703) 308-7991. The examiner can be reached between the hours of 7:30 am and 4:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, Donna Wortman, Primary Examiner can be reached at (703) 308-1032 or the examiner's supervisor, Lynette Smith, can be reached at (703)308-3909.

  
DONNA WORTMAN  
PRIMARY EXAMINER

Robert A. Zeman

February 15, 2001